



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

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BOB MARTIN

Commissioner

KIM GUADAGNO

Lt. Governor

Water Compliance and Enforcement

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IN THE MATTER OF : **ADMINISTRATIVE ORDER AND**
BAYONNE DRY DOCK & : **NOTICE OF CIVIL ADMINISTRATIVE**
REPAIR COMPANY : **PENALTY ASSESSMENT**

PEA140001 - 95470

This Administrative Order and Notice of Civil Administrative Penalty Assessment (hereinafter "AONOCAPA" or "Order") is issued pursuant to the authority vested in the Commissioner of the New Jersey Department of Environmental Protection (hereinafter the "Department") by N.J.S.A. 13:1D-1 et seq., the New Jersey Water Pollution Control Act (hereinafter the "Act"), N.J.S.A. 58:10A-1 et seq., and the New Jersey Pollutant Discharge Elimination System regulations, N.J.A.C. 7:14A-1 et seq., and is duly delegated to the Director of Water and Land Use Enforcement pursuant to N.J.S.A. 13:1B-4.

FINDINGS

1. Bayonne Dry Dock and Repair Company (hereinafter "Bayonne Dry Dock") owns and operates a full service ship repair yard for commercial and government vessels located at Constitution Avenue, Bayonne City, Hudson County.
2. The Department issued New Jersey Pollutant Discharge Elimination System (hereinafter "NJPDES") Discharge to Surface Water Permit number NJ0165808 to Bayonne Dry Dock on December 19, 2007, with an effective date of March 1, 2008, and an expiration date of February 28, 2013. The NJPDES Permit was modified effective December 1, 2010 and maintained the same expiration date. Bayonne Dry Dock submitted a NJPDES Permit renewal application to the Department which was received on February 24, 2014. Therefore, the conditions of the expired NJPDES Permit remain in full force and effect until such time as a renewed NJPDES Permit is issued by the Department. This NJPDES Permit authorizes the discharge of process wastewater and stormwater runoff from Bayonne Dry Dock's facility as noted in paragraph one (1) above, to Upper New York Bay.

3. Part III of the NJPDES Permit sets forth specific effluent parameters to be monitored and reported by Bayonne Dry Dock on Discharge Monitoring Reports (hereinafter "DMRs") and identifies discharge effluent limitations for certain parameters at certain discharge outfalls.
4. The Department conducted several compliance evaluation and assistance inspections at Bayonne Dry Dock from June 10, 2009 through June 21, 2013. An inspection report was generated by the Department and was sent to Bayonne Dry Dock with a cover letter for each of the inspections noted above, via the United States Postal Service (hereinafter "USPS") Certified Mail/Return Receipt Requested. Notices of Violation were issued by the Department to Bayonne Dry Dock on June 10, 2009, June 2, 2010, and June 14, 2011. All of the inspection reports and or Notices of Violation detailed NJPDES Permit effluent limitation violations by Bayonne Dry Dock at various discharge outfalls.
5. A review of DMRs submitted to the Department by Bayonne Dry Dock indicates that Bayonne Dry Dock has exceeded NJPDES Permit effluent limitations, as follows:

<u>Monitoring Period</u>	<u>Parameter</u>	<u>Outfall</u>	<u>Permit Limit</u>	<u>Reported Result</u>	<u>Seriousness</u>
3/2008	TOC	001	50 mg/l	272 mg/l	Major
4/2008	PHC	004	10 mg/l	28.7 mg/l	Major
5/2008	Zn	001	100 ug/l	199 ug/l	Major
5/2008	Cu	001	50 ug/l	215 ug/l	Major
5/2008	PHC	002	10 mg/l	61.8 mg/l	Major
6/2008	Pb	001	50 ug/l	155 ug/l	Major
6/2008	Cu	001	50 ug/l	89.1 ug/l	Major
7/2008	Cu	001	50 ug/l	181 ug/l	Major
8/2008	Zn	001	100 ug/l	126 ug/l	Moderate
8/2008	Cu	001	50 ug/l	92 ug/l	Major
9/2008	Zn	001	100 ug/l	167.85 ug/l	Major
9/2008	Cu	001	50 ug/l	320.75 ug/l	Major
10/2008	Cu	001	50 ug/l	72.1 ug/l	Moderate
11/2008	Cu	001	50 ug/l	98 ug/l	Major

3/2009	Cu	001	50 ug/l	66.1 ug/l	Moderate
4/2009	Zn	001	100 ug/l	167 ug/l	Major
4/2009	Cu	001	50 ug/l	94 ug/l	Major
5/2009	Cu	001	50 ug/l	70.4 ug/l	Moderate
6/2009	Cu	001	50 ug/l	79.2 ug/l	Major
6/2009	PHC	002	10 mg/l	14.2 mg/l	Moderate
9/2009	Cu	001	50 ug/l	71.6 ug/l	Moderate
9/2009	Zn	001	100 ug/l	129 ug/l	Moderate
1/2010	Cu	001	50 ug/l	145 ug/l	Major
2/2010	Zn	001	100 ug/l	173 ug/l	Major
2/2010	Cu	001	50 ug/l	137 ug/l	Major
2/2010	PHC	003	10 mg/l	22.7 mg/l	Major
2/2010	PHC	004	10 mg/l	17.5 mg/l	Major
3/2010	Cu	001	50 ug/l	86.3 ug/l	Major
9/2010	Zn	001	100 ug/l	123 ug/l	Moderate
9/2010	Cu	001	50 ug/l	114 ug/l	Major
10/2010	Zn	001	100 ug/l	399 ug/l	Major
10/2010	Cu	001	50 ug/l	198 ug/l	Major
11/2010	Zn	001	100 ug/l	253 ug/l	Major
11/2010	Cu	001	50 ug/l	114 ug/l	Major
1/2011	Zn	001	100 ug/l	343 ug/l	Major
1/2011	Cu	001	50 ug/l	67 ug/l	Moderate
2/2011	Zn	001	100 ug/l	157 ug/l	Major

3/2011	Zn	001	100 ug/l	137 ug/l	Moderate
3/2011	Cu	001	50 ug/l	69.6 ug/l	Moderate
5/2011	Zn	001	100 ug/l	145 ug/l	Moderate
5/2011	Cu	001	50 ug/l	84 ug/l	Major
10/2011	Zn	001	100 ug/l	303 ug/l	Major
4/2012	Cu	001	50 ug/l	80.7 ug/l	Major
5/2012	Cu	001	50 ug/l	78.0 ug/l	Major
8/2012	Cu	001	50 ug/l	86.9 ug/l	Major
9/2012	Cu	001	50 ug/l	257 ug/l	Major
9/2012	Zn	001	100 ug/l	226 ug/l	Major
10/2012	Cu	001	50 ug/l	78.4 ug/l	Major
3/2013	O&G	001	10 mg/l	33.7 mg/l	Major
4/2013	Cu	001	50 ug/l	164 ug/l	Major
4/2013	Zn	001	100 ug/l	121 ug/l	Moderate
6/2013	Cu	001	50 ug/l	86.8 ug/l	Major
6/2013	Zn	001	100 ug/l	238 ug/l	Major
10/2013	TOC	001	50 mg/l	617.5 mg/l	Major
10/2013	Zn	001	100 ug/l	277 ug/l	Major
10/2013	Cu	001	50 ug/l	261 ug/l	Major
11/2013	Cu	001	50 ug/l	84 ug/l	Major
12/2013	Cu	001	50 ug/l	66 ug/l	Moderate

The following abbreviations were used in the table above:

TOC = Total Organic Carbon
 PHC = Petroleum Hydrocarbons
 O&G = Oil and Grease

Cu = Copper
Pb = Lead
Zn = Zinc
mg/l = milligrams per liter
ug/l = micrograms per liter

6. Pursuant to the NJPDES Permit, Bayonne Dry Dock discharges pollutants as defined by N.J.A.C. 7:14A-1.2, into the waters of the State.
7. No person shall discharge any pollutant except in conformity with a valid NJPDES Permit issued pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.
8. Based on the facts set forth in these Findings, the Department has determined that Bayonne Dry Dock has violated the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the regulations promulgated pursuant thereto, specifically N.J.A.C. 7:14A-6.2(a)1.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

9. Bayonne Dry Dock shall immediately comply with the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., the implementing regulations, N.J.A.C. 7:14A-1 et seq., and NJPDES Permit number NJ0165808.
10. This Order shall be effective upon receipt by Bayonne Dry Dock or someone on the violator's behalf authorized to accept service.

NOTICE OF CIVIL ADMINISTRATIVE PENALTY ASSESSMENT **AND** **NOTICE OF RIGHT TO A HEARING**

11. Pursuant to N.J.S.A. 58:10A-10.d and N.J.A.C. 7:14-8.1 et seq., and based upon the above Findings, the Department has determined that a civil administrative penalty is hereby assessed against Bayonne Dry Dock in the amount of \$950,000.00. The Department's rationale for the civil administrative penalty is set forth in Appendix A, which is attached hereto and incorporated herein.
12. Pursuant to N.J.S.A. 58:10A-10.d and N.J.A.C. 7:14-8.13, the Department may amend the civil administrative penalty amount for any economic benefit which a violator has realized as a result of not complying with, or by delaying compliance with, the requirements of the Act.
13. Pursuant N.J.S.A. 58:10A-10d(2) and N.J.A.C. 7:14-8.4 et seq., Bayonne Dry Dock is entitled to request a hearing. Bayonne Dry Dock shall, in its request for a hearing, complete and submit the enclosed Administrative Hearing Request Checklist and Tracking Form along with all required information. Submittal of or granting of a hearing request does not stay the terms or effect of this Order.

14. If no request for a hearing is received within twenty (20) calendar days from receipt of this AONOCAPA, it shall become a Final Order upon the twenty-first (21st) calendar day following its receipt, and the penalty shall be due and payable.
15. If a timely request for a hearing is received, payment of the penalty is due when Bayonne Dry Dock receives a notice of the denial of the request, or, if the hearing request is granted, when Bayonne Dry Dock withdraws the request or abandons the hearing, or, if the hearing is conducted, when Bayonne Dry Dock receives a final decision from the Commissioner in this matter.
16. Payment shall be made by certified or cashier's check payable to "Treasurer, State of New Jersey" and shall be submitted along with the enclosed Enforcement Invoice to:

Department of Treasury
Division of Revenue
P.O. Box 417
Trenton, New Jersey 08646-0417

GENERAL PROVISIONS

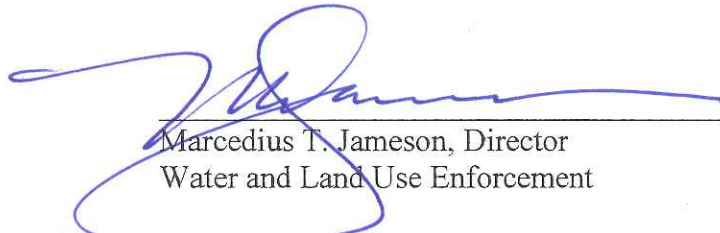
17. This AONOCAPA is binding on Bayonne Dry Dock, their principals, directors, officers, agents, successors, assigns, employees, tenants, any trustee in bankruptcy or other trustee, and any receiver appointed pursuant to a proceeding in law or equity.
18. No obligations imposed by this AONOCAPA are intended to constitute a debt which should be limited or discharged in a bankruptcy proceeding. All obligations are imposed pursuant to the police powers of the State of New Jersey, intended to protect the public health, safety, welfare, and the environment.
19. This AONOCAPA is issued only for the violations identified in the Findings hereinabove and that violations of any statutes, rules or permits other than those herein cited may be cause for additional enforcement actions, either administrative or judicial, being instituted. By issuing this AONOCAPA, the Department does not waive its rights to initiate additional enforcement actions.
20. Neither the issuance of this AONOCAPA nor anything contained herein shall relieve Bayonne Dry Dock of the obligation to comply with all applicable laws, including but not limited to the statutes and regulations cited herein.
21. Pursuant to N.J.S.A. 58:10A-10.d, the Department is authorized to assess a civil administrative penalty of not more than \$50,000 for each violation, and each day during which the violation continues shall constitute an additional, separate, and distinct offense.
22. Pursuant to N.J.S.A. 58:10A-10.e, any person who violates the provisions of N.J.S.A. 58:10A-1 et seq., or any code, rule, or regulation promulgated pursuant thereto shall be liable to a penalty of not more than \$50,000 per day to be collected in a civil action, and any person who violates

an administrative order issued pursuant to N.J.S.A. 58:10A-10.b, including this Administrative Order, or a court order issued pursuant to N.J.S.A. 58:10A-10.c, or who fails to pay a civil administrative penalty assessed pursuant to N.J.S.A. 58:10A-10.d in full after it is due is subject upon order of a court to a civil penalty not to exceed \$50,000 per day of such violations. Each day during which the violation continues constitutes an additional, separate, and distinct offense.

23. Pursuant to N.J.S.A. 58:10A-10.f, any person who purposely, knowingly, or recklessly violates this Act, and the violation causes a significant adverse environmental effect, shall, upon conviction, be guilty of a crime of the second degree, and shall, notwithstanding the provisions of subsection a., of N.J.S.A. 2C:43-3, be subject to a fine of not less than \$25,000 nor more than \$250,000 per day of violation, or by imprisonment, or by both.

DATE:

8/14/14



Marcedius T. Jameson, Director
Water and Land Use Enforcement

APPENDIX A – PENALTY RATIONALE

Bayonne Dry Dock & Repair Company
NJPDES Permit No.: NJ0165808
Program Interest No.: 95470
Compliance Activity No.: PEA 140001
Bayonne City, Hudson County

The Civil Administrative Penalty Assessed in this AONOCAPA corresponds to the violations listed in paragraph five (5) of the AONOCAPA, and has been calculated pursuant to the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Water Pollution Control Act Regulations, N.J.A.C. 7:14-8.1 et seq., as specified below.

DISCHARGE VIOLATIONS

Pursuant to N.J.A.C. 7:14-8.5(e), the penalties have been calculated from the penalty matrix in N.J.A.C. 7:14-8.5(f), as follows:

- A. The CONDUCT of the Violator has been determined by the Department, pursuant to N.J.A.C. 7:14-8.5(h), to be:

MINOR, as the Department does not currently have in its possession information that would support the firm conclusion that the violations were due to intentional, deliberate, purposeful, knowing, willful, or foreseeable conduct on the part of the Violator.

- B. The SERIOUSNESS of the violations has been individually determined for each violation by the percent exceedance of the relevant NJPDES Permit effluent limitation, pursuant to N.J.A.C. 7:14-8.5(g).

The PENALTY CALCULATION for the above, utilizing MINOR CONDUCT and at the mid-range of the penalty matrix, is as follows:

<u>Monitoring Period</u>	<u>Parameter</u>	<u>Outfall</u>	<u>Reported Result</u>	<u>Seriousness</u>	<u>Penalty</u>
3/2008	TOC	001	272 mg/l	Major	\$20,000
4/2008	PHC	004	28.7 mg/l	Major	\$20,000
5/2008	Zn	001	199 ug/l	Major	\$20,000
5/2008	Cu	001	215 ug/l	Major	\$20,000
5/2008	PHC	002	61.8 mg/l	Major	\$20,000

6/2008	Pb	001	155 ug/l	Major	\$20,000
6/2008	Cu	001	89.1 ug/l	Major	\$20,000
7/2008	Cu	001	181 ug/l	Major	\$20,000
8/2008	Zn	001	126 ug/l	Moderate	\$5,000
8/2008	Cu	001	92 ug/l	Major	\$20,000
9/2008	Zn	001	167.85 ug/l	Major	\$20,000
9/2008	Cu	001	320.75 ug/l	Major	\$20,000
10/2008	Cu	001	72.1 ug/l	Moderate	\$5,000
11/2008	Cu	001	98 ug/l	Major	\$20,000
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4/2009	Zn	001	167 ug/l	Major	\$20,000
4/2009	Cu	001	94 ug/l	Major	\$20,000
5/2009	Cu	001	70.4 ug/l	Moderate	\$5,000
6/2009	Cu	001	79.2 ug/l	Major	\$20,000
6/2009	PHC	002	14.2 mg/l	Moderate	\$5,000
9/2009	Cu	001	71.6 ug/l	Moderate	\$5,000
9/2009	Zn	001	129 ug/l	Moderate	\$5,000
1/2010	Cu	001	145 ug/l	Major	\$20,000
2/2010	Zn	001	173 ug /l	Major	\$20,000
2/2010	Cu	001	137 ug/l	Major	\$20,000
2/2010	PHC	003	22.7 mg/l	Major	\$20,000

2/2010	PHC	004	17.5 mg/l	Major	\$20,000
3/2010	Cu	001	86.3 ug/l	Major	\$20,000
9/2010	Zn	001	123 ug/l	Moderate	\$5,000
9/2010	Cu	001	114 ug/l	Major	\$20,000
10/2010	Zn	001	399 ug/l	Major	\$20,000
10/2010	Cu	001	198 ug/l	Major	\$20,000
11/2010	Zn	001	253 ug/l	Major	\$20,000
11/2010	Cu	001	114 ug/l	Major	\$20,000
1/2011	Zn	001	343 ug/l	Major	\$20,000
1/2011	Cu	001	67 ug/l	Moderate	\$5,000
2/2011	Zn	001	157 ug/l	Major	\$20,000
3/2011	Zn	001	137 ug/l	Moderate	\$5,000
3/2011	Cu	001	69.6 ug/l	Moderate	\$5,000
5/2011	Zn	001	145 ug/l	Moderate	\$5,000
5/2011	Cu	001	84 ug/l	Major	\$20,000
10/2011	Zn	001	303 ug/l	Major	\$20,000
4/2012	Cu	001	80.7 ug/l	Major	\$20,000
5/2012	Cu	001	78.0 ug/l	Major	\$20,000
8/2012	Cu	001	86.9 ug/l	Major	\$20,000
9/2012	Cu	001	257 ug/l	Major	\$20,000

9/2012	Zn	001	226 ug/l	Major	\$20,000
10/2012	Cu	001	78.4 ug/l	Major	\$20,000
3/2013	O&G	001	33.7 mg/l	Major	\$20,000
4/2013	Cu	001	164 ug/l	Major	\$20,000
4/2013	Zn	001	121 ug/l	Moderate	\$5,000
6/2013	Cu	001	86.8 ug/l	Major	\$20,000
6/2013	Zn	001	238 ug/l	Major	\$20,000
10/2013	TOC	001	617.5 mg/l	Major	\$20,000
10/2013	Zn	001	277 ug/l	Major	\$20,000
10/2013	Cu	001	261 ug/l	Major	\$20,000
11/2013	Cu	001	84 ug/l	Major	\$20,000
12/2013	Cu	001	66 ug/l	Moderate	<u>\$5,000</u>

Total Penalty = \$950,000

**TOTAL PENALTY FOR THIS ADMINISTRATIVE ORDER AND NOTICE OF CIVIL
ADMINISTRATIVE PENALTY ASSESSMENT: \$950,000.00**